



WISCONSIN LEGISLATIVE COUNCIL
PROPOSED REPORT TO THE LEGISLATURE

SPECIAL COMMITTEE ON
APPLICABILITY OF OPEN
MEETINGS LAW TO QUASI-
GOVERNMENTAL BODIES

February 22, 2007

PRL 2007-01

Special Committee on Applicability of Open Meetings Law to Quasi-Governmental Bodies

Prepared by:
Ronald Sklansky, Senior Staff Attorney, Dan Schmidt, Senior Analyst, and Jessica Karls, Staff Attorney
February 22, 2007

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PART I

NO RECOMMENDATION

The Special Committee on Applicability of Open Meetings Law to Quasi-Governmental Bodies has permanently adjourned. The Special Committee makes no recommendation.

The Special Committee held three meetings during which it focused on the applicability of the Open Meetings Law to economic development corporations. At its third meeting, the Special Committee considered draft legislation that would have applied the Open Meetings Law to an economic development corporation that exhibits a specified level of public involvement as measured by public funding and participation by public officers or employees. Because the members of the Special Committee could not reach a consensus regarding the draft legislation, the chairperson permanently adjourned the Special Committee.

PART II

COMMITTEE ACTIVITY

Assignment

The Joint Legislative Council established the Special Committee on Applicability of Open Meetings Law to Quasi-Governmental Bodies and appointed the chairperson by a June 9, 2006 mail ballot. The committee was directed to: (a) review recent Attorney General opinions regarding the applicability of the Open Meetings Law to “quasi-governmental” bodies, such as economic development corporations, to determine whether the public policy set forth in those opinions is desirable; and (b) develop legislation to clarify the applicability of the Open Meetings Law to quasi-governmental bodies either by codifying those policies or by delineating the specific condition under which quasi-governmental bodies are subject to the Open Meetings Law.

Membership of the Special Committee, appointed by an August 1, 2006 mail ballot, consisted of one Senator, three Representatives, and nine public members. A list of committee members is included as *Appendix 2* to this report.

Summary of Meetings

The Special Committee held three meetings at the State Capitol in Madison on the following dates:

October 18, 2006
December 13, 2006
January 31, 2007

At the October 18, 2006 meeting, the Special Committee reviewed a staff memo that provided an overview of the Open Meetings Law, a discussion of the Attorney General’s opinions regarding the applicability of the Open Meetings Law to quasi-governmental corporations, and provided the Special Committee with options for addressing the committee’s study charge. No public testimony was presented. Instead, the committee members discussed the meaning of the term “quasi-governmental corporation,” the nature of economic development corporations, confidentiality needs, and whether the provisions of the Open Meetings Law are adequate to protect the functions of an economic development corporation.

At the December 13, 2006 meeting, the Special Committee considered preliminary bill drafts that entirely exempted quasi-governmental corporations from the Open Meetings Law, entirely exempted economic development corporations from the Open Meetings Law, and provided that certain economic development corporations could move into a closed session to review matters relating to development or redevelopment of a community or area whenever a competitive or bargaining reason requires a closed session. The committee also received testimony from Monica Burkert-Brist, an assistant attorney general heading the Department of Justice’s Integrity Unit. Ms. Brist recommended the implementation of a bright-line test, such as requiring compliance with the Open Meetings Law for an economic development corporation that uses public funds for a specific percentage of its budget or that has a specific number of public officials on its board. Following a discussion of the committee assignment, the committee decided to narrow its focus to the applicability of the Open Meetings Law to economic development corporations and the staff stated it would draft legislation exempting an economic development corporation from the Open Meetings Law if less than 50% of its budget consisted of public funds and less than ½ of its board membership consisted of public officials.

At the January 31, 2007 meeting, the Special Committee considered draft legislation applying the Open Meetings Law to an economic development corporation when the economic development corporation is a nonprofit entity and either receives at least 50% of its funds from governmental bodies or at least ½ of its board or officers consists of public officials or public employees. The legislation also provided that an economic development corporation meeting these conditions could convene in a closed session to consider matters relating to development or redevelopment of a community or area whenever competitive or bargaining reasons require a closed session. The draft legislation made corresponding amendments to the Open Records Law. Noting a lack of consensus among the committee members, the chairperson stated that he would request an opinion from the Attorney General as to whether the current Open Meetings Law could be used to close a meeting of a governmental body when that body considers the records of a private sector business.

Appendix 1

Joint Legislative Council

[Joint Legislative Council Members Who Selected and Appointed Committee and Its Membership]

Co-Chair

ALAN LASEE
Senate President
2259 Lasee Road
De Pere, WI 54115

Co-Chair

STEVE WIECKERT
Representative
1 Weatherstone Drive
Appleton, WI 54914

SENATORS

RONALD W. BROWN
1112 Violet Avenue
Eau Claire, WI 54701

DAN KAPANKE
1610 Lakeshore Drive
La Crosse, WI 54603

DALE SCHULTZ
Majority Leader
515 N. Central Avenue
Richland Center, WI 53581

RUSSELL DECKER
6803 Lora Lee Lane
Schofield, WI 54476

MARK MILLER
4903 Roigan Terrace
Monona, WI 53716

DAVID ZIEN
President Pro Tempore
1716 63rd Street
Eau Claire, WI 54703

SCOTT FITZGERALD
N4692 Maple Road
Juneau, WI 53039

FRED A. RISSER
5008 Risser Road
Madison, WI 53705

GLENN GROTHMAN
111 South 6th Avenue
West Bend, WI 53095

JUDY ROBSON
Minority Leader
2411 E. Ridge Road
Beloit, WI 53511

REPRESENTATIVES

JOHN AINSWORTH
W6382 Waukechon Road
Shawano, WI 54166

MICHAEL HUEBSCH
Majority Leader
419 West Franklin
West Salem, WI 54669

MARLIN D. SCHNEIDER
3820 Southbrook Lane
Wisconsin Rapids, WI 54494

PEDRO COLON
338 West Walker Street
Milwaukee, WI 53204

DEAN KAUFERT
1360 Alpine Lane
Neeah, WI 54956

DAVID TRAVIS
5440 Willow Road
Waukegan, WI 53597

STEPHEN J. FREESE
Speaker Pro Tempore
310 East North Street
Dodgeville, WI 53533

JIM KREUSER
Minority Leader
3505 14th Place
Kenosha, WI 53144

JOHN GARD
Speaker
481 Aubin Street, P.O. Box 119
Peshtigo, WI 54157

ANN NISCHKE
202 W. College Avenue
Waukesha, WI 53186

This 22-member committee consists of the majority and minority party leadership of both houses of the Legislature, the co-chairs and ranking minority members of the Joint Committee on Finance, and 5 Senators and 5 Representatives appointed as are members of standing committees.

Joint Legislative Council

[Current Joint Legislative Council Members Receiving Committee Report]

Co-Chair

FRED RISSER

Senate President
5008 Risser Road
Madison, WI 53705

Co-Chair

STEVE WIECKERT

Representative
1 Weatherstone Drive
Appleton, WI 54914

SENATORS

ROGER BRESKE

8800 Hwy. 29
Eland, WI 54427

TIM CARPENTER

President Pro Tempore
2957 South 38th Street
Milwaukee, WI 53215

G. SPENCER COGGS

3732 North 40th Street
Milwaukee, WI 53216

ALBERTA DARLING

1325 West Dean Road
River Hills, WI 53217

RUSSELL DECKER

6803 Lora Lee Lane
Weston, WI 54476

SCOTT FITZGERALD

Minority Leader
N4692 Maple Road
Juneau, WI 53039

SHEILA HARSDORF

N6627 County Road E
River Falls, WI 54022

ALAN LASEE

2259 Lasee Road
De Pere, WI 54115

MARK MILLER

4903 Roigan Terrace
Monona, WI 53716

JUDY ROBSON

Majority Leader
2411 E. Ridge Road
Beloit, WI 53511

REPRESENTATIVES

JOAN BALLWEG

170 W. Summit Street
Markesan, WI 53946

TERESE BERCEAU

4326 Somerset Lane
Madison, WI 53711

JEFF FITZGERALD

Majority Leader
910 Sunset
Horicon, WI 53032

MARK GOTTLIEB

Speaker Pro Tempore
1205 Noridge Trail
Port Washington, WI 53074

MICHAEL HUEBSCH

Speaker
419 West Franklin
West Salem, WI 54669

DEAN KAUFERT

1360 Alpine Lane
Neenah, WI 54956

JIM KREUSER

Minority Leader
3505 14th Place
Kenosha, WI 53144

MARK POCAN

309 N. Baldwin Street
Madison, WI 53703

KITTY RHOADES

708 4th Street
Hudson, WI 54016

MARLIN SCHNEIDER

3820 Southbrook Lane
Wisconsin Rapids, WI 54494

This 22-member committee consists of the majority and minority party leadership of both houses of the Legislature, the co-chairs and ranking minority members of the Joint Committee on Finance, and 5 Senators and 5 Representatives appointed as are members of standing committees.

Appendix 2

APPLICABILITY OF OPEN MEETINGS LAW TO QUASI-GOVERNMENTAL BODIES

Senator Scott Fitzgerald, Chair
N4692 Maple Road
Juneau, WI 53039

Representative Thomas A. Lothian
539 Park Ridge Road
Williams Bay, WI 53191

Duane Foulkes, President
Apache Stainless Equipment Corporation
200 Industrial Drive
Beaver Dam, WI 53916

Joseph Hasler
LaRowe, Gerlach & Roy, S.C.
110 Main Street, P.O. Box 231
Reedsburg, WI 53959

John Laabs, President
Wisconsin Broadcasters Association
44 East Mifflin Street, Suite 900
Madison, WI 53703

Melanie Swank
Assistant City Attorney
City Hall, 200 East Wells Street
Milwaukee, WI 53202

Ellen Totzke
1316 East Shade Tree Lane
Appleton, WI 54915

Representative Jeff Fitzgerald
910 Sunset
Horicon, WI 53032

Representative Mark Pocan
309 North Baldwin
Madison, WI 53703

Peter Fox, Executive Director
Wisconsin Newspaper Association
3822 Mineral Point Road
P.O. Box 5580
Madison, WI 53705

Jeff Kitchen, Broker/Owner
Century 21 Affiliated
215 North Spring Street
Beaver Dam, WI 53916

Andy Lewis
Center for Community Economic
Development, UW-Extension
328 Lowell Center
610 Langdon Street
Madison, WI 53703

James Otterstein
Economic Development Manager
51 South Main Street
Janesville, WI 53545

STUDY ASSIGNMENT: The committee is directed to: (a) review recent Attorney General opinions regarding the applicability of the Open Meetings Law to “quasi-governmental” bodies, such as economic development corporations, to determine whether the public policy set forth in those opinions is desirable; and (b) develop legislation to clarify the applicability of the Open Meetings Law to quasi-governmental bodies either by codifying those policies or by delineating the specific condition under which quasi-governmental bodies are subject to the Open Meetings Law.

13 MEMBERS: 1 Senator, 3 Representatives, and 9 Public Members.

LEGISLATIVE COUNCIL STAFF: Ronald Sklansky, Senior Staff Attorney; Dan Schmidt, Senior Analyst; Jessica Karls, Staff Attorney; and Julie Learned, Support Staff.

Appendix 3

Committee Materials List

(Copies of documents are available at www.legis.state.wi.us/lc)

January 31, 2007 Meeting	Notice	Agenda	Audio	Minutes
<ul style="list-style-type: none"> • WLC: 0047/1, relating to the applicability of the open records law and the open meetings law to an economic development corporation • WLC: 0048/1, relating to the applicability of the open records law and the open meetings law to an economic development corporation • Letter, to Senator Scott Fitzgerald, Chair, Special Committee on Applicability of Open Meetings Law to Quasi-Governmental Bodies, from Peter D. Fox, Executive Director, Wisconsin Newspaper Association (January 3, 2007) 				
December 13, 2006 Meeting	Notice	Agenda	Audio	Minutes
<ul style="list-style-type: none"> • Memo No. 2, <i>Draft Options</i> (December 1, 2006) <ul style="list-style-type: none"> ○ WLC: 0019/1, relating to the applicability of the open meetings law to a quasi-governmental corporation ○ WLC: 0020/1, relating to the applicability of the open meetings law to an economic development corporation ○ WLC: 0021/1, relating to the applicability of the open meetings law to an economic development corporation • Letter, to Senator Scott Fitzgerald, Chair, from Attorney General Peggy Lautenschlager (December 12, 2006) • Respondent's Brief, in State v. Beaver Dam Area Development Corporation 				
October 18, 2006 Meeting	Notice	Agenda	Audio	Minutes
<ul style="list-style-type: none"> • Memo No. 1, <i>Overview of Wisconsin's Open Meetings Law and its Application to Quasi-Governmental Bodies</i> (October 9, 2006) • Memo, <i>Insights and Suggestions for the Committee's Consideration</i>, from Attorney General Peggy Lautenschlager (October 18, 2006) • Court of Appeals Brief, prepared by Attorney General Peggy Lautenschlager • Letter, to Thomas Geyer from Attorney General Donald J. Hanaway, submitted by Special Committee member Andrew Lewis at the request of Legislative Council staff (February 26, 1987) • Survey of Local Economic Development Organizations, University of Wisconsin-Extension, submitted by Special Committee member Andrew Lewis at the request of Legislative Council staff • Steps to Creating an Economic Development Corporation, University of Wisconsin-Extension, submitted by Special Committee member Andrew Lewis at the request of Legislative Council staff 				